SBCivil Writ Petition No.4482/2004

Kuldeep Kalla

Vs.

State Bank of India & Ors.

Date of Order :: 17th October, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Sanjeet Purohit, for the petitioner.
Mr. M.S.Singhvi, for the respondents.

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This petition for writ is preferred calling in question legality of the decision taken by the respondent Bank to decline appointment on compassionate grounds to the petitioner who is only son among three children of deceased bank employee.

In brief, facts of the case are that Shri Rajendra Prasad Kalla while serving bank as Senior Assistant died on 13.10.2002, therefore, with consent and approval of his mother and other family members the petitioner preferred an application for appointment to a suitable post in bank on compassionate grounds. The request for appointment by the application aforesaid stood declined by the competent authority on the ground that condition of the family cannot be termed penurious that warrant appointment on compassionate grounds.

The widow of late bank employee before coming to this Court by her son submitted a representation to the respondents detailing her socio-economic condition to reiterate the cause for grant of appointment to her son. The representation given by the widow deserves to be noticed, hence is reproduced as under:-

> "आपका पत्र क्रमांक बी एम 07 दिनांक 12.6.2003 प्राप्त हुआ एवं यह जान कर गहरा आघात लगा कि बैंक मेरे पुत्र कुलदीप को मेरे मृतक पति स्व0 श्री आर पी कल्ला के देहान्त उपरान्त मानवीय आधार पर / अनुकम्पा के आधार पर नियुक्ति देने में असमर्थ है। पत्रानुसार बैंक मेरे पति के मृत्यु उपरान्त मिलने वाली पेंशन एवं अन्य परिलाभों को मेरे भावी जीवन यापन हेतु पर्याप्त हैं ऐसा माना गया है। इस संदर्भ में मैं उपरोक्त नियुक्ति हेतु बैंक द्वारा मानवीय आधार को मद्देनजर रखते हुऐ निम्न लिखित तथ्य प्रस्तुत करती हूँ एवं मुझे पूर्ण विश्वास है कि बैंक मेरे पुत्र को अनुकम्पा के आधार पर नियुक्ति प्रदान कर मुझ विधवा स्त्री को आर्थिक सम्बल प्रदान करेंगे ।
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> 1- महोदय जी मेरे पति जो कि बैंक में वरिष्ठ सहायक के पद पर कार्यरत थे उनको प्रतिमाह 16,077/- वेतन मिलता था जिससे मेरा घर का खर्च, बच्चों की शिक्षा एवं सामाजिक दायित्वों का निर्वाहन भी भलीभांति नहीं हो पाता था एवं समय समयपर मेरे पति को बैंक से विभिन्न योजनाओं के अन्तर्गत ऋण भी लेना पड़ता था। वर्तमान में बैंक द्वारा मुझे मेरेपति की पेंशन मात्र 6113/- मासिक पेंशन स्वीकृत हुई हैं जो कि मुझे केवल 5 वर्ष तक ही मिलेगी तत्पश्चात मुझे फेमेली पेंशन रू 555 प्रतिमाह ही मिलेगी वर्तमान में देय उपरोक्त पेंशन मेरे पति की आय का लगभग 32 प्रतिशत ही है। ऐसी परिस्थिति में मुझे मेरे परिवार का दैनिक भरण पोषण करना भी दुभर हो रहा है एवं अपने जीवन स्तर को बनाये रखना असम्भव सा प्रतीत हो रहा है तो पांच वर्ष पश्चात मेरी आर्थिक स्थिति का अन्दाजा लगाया जा सकता है।
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> 2- महोदय जी मेरे पति ने गृह निर्माण हेतु बैंक से रू 7 लाख 20 हजार का ऋण स्वीकृत करवाया था परन्तु मेरे पति का आकस्मिक देहान्त हो जाने के कारण गृह निर्माण अधूरा (पत्थर स्तर तक) ही बन पाया है एवं बैंक द्वारा बकाया ऋण की राशि रू 4,04,580/- मुझे प्राप्त होने वाले परिलाभों में से पुन: जमा कर गृह ऋण खाते को बन्द कर दिया गया। ऐसी स्थिति में उपरोक्त मकान मात्र ढांचे की स्थिति में है एवं मेरे पास इतनी राशि शेष नहीं

नहीं बची हैं कि मैं मकान को रहने योग्य भी बना सकूं । परिस्थिति वश मुझे किराये के मकान में रहना पड रहा है जिसका मासिक किराया रू 2000 देना पड रहा है। अपूर्ण मकान के ढांचे की फोटोग्राफ आपको प्रेषित है।

3- जैसा कि आपने मेरे आस्थियों और देयताओं का अध्ययन किया जिसमें स्पष्ट है कि बैंक ने कुल मुझे 894328/- मेरे पति के अन्तिम लाभों का भुगतान किया और रू 1,19,922 मेरे पति की बचत राशि थी जिनमें से बैंक ने रू 8,83,344 तो मकान ऋण, कन्ज्यूमर ऋण, व्यक्तिगत ऋण आदि बन्द करने में काट लिये जिसमें मकान का प्रोजेक्ट पूरा नहीं हुआ था और रू 78,220/- एन एस सी/ एल आई सी और औवर डाफट ऋण खातों को बन्द करने में जमा कर लिये।

अन्तिम लाभ मिले	बैंक द्वारा ऋण वसूली
8,94,328/-	8,83,334/-
बचत 1,19,922/-	78,220/-
कुल 10,14,250/-	9,61,554/-

4- इस प्रकार मुझे मेरे पति के अन्तिम लाभों में से बैंककी समस्त देनदारिया चुकान के पश्चात मात्र रू 52,696/- ही मिले जो मेरे स्व0 पति के बारह दिनों के सामाजिक खर्चों में व्यय हो गये। इस प्रकार से मेरे पास आज की तारीख में सिवाय मेरे पति की पेंशन के और कोई आमदनी नहीं है।

5. महोदय जी मेरे दो पुत्रियां एवं एक पुत्र है जिनमें से एक पुत्री का विवाह हो चुका हैं एवं सामाजिक स्तर पर उसके दायित्वों का निर्वाहन भी मेरे उपर हैं, मेरी एक लडकी जिसकी आयु 22 वर्ष हैं एवं शिक्षा ग्रहण कर रही है उसकी न केवल शिक्षा का व्यय बल्कि निकट भविष्य में उसके विवाह करने का आर्थिक भार भी मुझे वहन करना है। मेरे पुत्र ने वाणिज्य में स्नातक की डिग्री इसी वर्ष प्राप्त की है तथा भविष्य में उसके भी विवाह का आर्थिक भार मुझे ही वहन करना पडेगा।

महोदयजी उपरोक्त तथ्यों को देखते हुऐ मुझे ऐसा लगता है कि यदि मेरे पुत्र को अनुकम्पा के आधार पर बैंक में नियुक्ति नहीं मिली तो वर्तमान में प्राप्त होने वाली मासिक आय से मेरेपरिवार का जीवन यापन करना मुश्किल ही नहीं अपितु दुभीर हो जावेगा तथा मेरे बच्चों का भविष्य भी अंधकारमय हो जायेगा। महोदय जी मेरे पति के देहान्त उपरांत सामाजिक स्तर पर एवं आर्थिक स्तर पर मेरे उपर आने वाले दायित्वों का भान सभी को भली भांति होगा ऐसी स्थिति में नियमित मासिक आय न होने से सामाजिक दायित्वों का वहन न करने से समाज में हमारी स्थिति दयनीय हो गई हैं एवं आर्थिक स्तर पर भी हम अपने जीवन स्तर को बनाये रखने में पूर्णतया असमर्थ है पति के देहान्त से जो हमें मानसिक आघात लगा उससे हम अभी अबर ही नहीं पाये कि बैंक द्वारा ऐसा निर्णय लेना हमारे परिवार के लिये एक और आघात हैं ओर इससे अबर पाना शायद हमारे लिये सम्भव नहीं होगा, महोदय जी मुझे आशा ही नहीं पूर्ण विश्वास है

कि भारतीय स्टेट बैंक जैसा विशाल बैंक हमारे उपरोक्त तथ्यों को एवं मेरे स्वर्गीय पति द्वारा बैंक में 25 वर्ष निष्ठापूर्वक एवं इमानदारी से पूर्ण समर्पण भाव से जो सेवाऐं प्रदान की उनको मदेनजर रखते हुऐ मेरी इस प्रार्थना को मानवीय आधार पर पुनर्विचार कर मेरे पुत्र कुलदीप कल्ला को अनुकम्पा के आधार पर नियुक्ति प्रदान कर एक परिवार को आर्थिक एवं सामाजिक रूप से टूटने से अवश्य बचायेंगे इसी पूर्ण आशा के साथ"

From reading of the representation submitted by mother of the petitioner it is apparent that she is to receive family pension for a period of five years in a tune of about Rs.7000/-, she received only a sum of about Rs.52,000/- at the time of death of her husband, she is having a half constructed skeleton of the house, she is residing in a rented premises with rent of Rs.2000/- per month and she is still to undertake marriage of her younger daughter. The petitioner also submitted a notice for demand of justice through his counsel but of no consequence. The claim of the petitioner is that the bank has not considered his family condition objectively and reached at an erroneous finding that the circumstances do not prove the petitioner and his family in penurious conditions.

In reply to the writ petition it is stated by the respondents that only criteria which can justify compassionate employment is the penurious condition of the family and in the present case the competent authority after examining the financial condition of the petitioner's family reached at a specific conclusion that it cannot be termed as penurious and,

therefore, the petitioner is not entitled for appointment on compassionate grounds. According to the respondents the case of the petitioner was considered under “Scheme for Employment of the Dependants of the Employees Who Die While in the Service of the Bank – Service on Compassionate Grounds”. Under the scheme aforesaid a criteria is prescribed for determining financial condition of the family, that reads as under:-

> “Financial condition of the family
>
> The dependents of an employee dying in harness may be considered for compassionate appointment provided the family is without sufficient means of livelihood, specifically keeping in view the following:
>
> (a)Family pension.
> (b)Gratuity amount received.
> (c)Employee's/Employer's contribution to PF.
> (d)Any compensation paid by the Bank or its Welfare Fund.
> (e)Proceeds of LIC policy and other investments of the deceased employee.
> (f)Income of family from other sources.
> (g)Employment of other family members.
> (h)Size of the family and liabilities, etc.”

It is emphasised that the petitioner is a member of a family that is receiving family pension and that is sufficient to sustain, therefore, the

petitioner is declared disentitled for getting appointment on compassionate grounds.

The respondents alongwith their reply also placed on record the note on basis of which appointment was declined to the petitioner on compassionate grounds. The note referred above reads as under:-

> "The Dy. General Manager Jaipur Zonal Office, vide his letter No.Ankaj/Karmik/1323 dated 04.03.03 placed below (Flag 'A'), has recommended the case of Shri Kuldeep Kalla s/o Late Shri Rajendra Prasad Kalla, Sr. Asstt., for appointment on compassionate grounds in Clerical Cadre. Shri Kalla expired on 13.10.2002 at the age of 54 years. He had served the Bank for 24 years. No disciplinary action was pending or ever initiated against Shri Kalla during his service in the Bank.
>
> The case has been examined as per Corporate Centre Guidelines for appointment on compassionate grounds and our observations have been summarised below:
>
> A)Position regarding Assets & Liabilities of the family :

ASSETS		LIABILITIES (in lacs)	
A)TERMINAL BENEFITS		(a)TO THE BANK	
a)P.F.	: 5.87	Consumer Loan	0.16
b)Gratuity	: 2.22	Personal Loan	0.88
c)Leave Enca-shment	: 1.02	Housing Loan	4.05
		Addl.Hous.Loan	2.32
d)M.W.Fund (Relief)	: 0.10	Demand Loan	0.15
		Overdraft	0.78
	9.21		8.34
B)MOVABLE PROPERTY		(b)TO OUTSIDERS	
Household goods	NIL	Friends/Relatives	1.27*

C)IMMOVABLE PROPERTY

Constructed house and value thereof	:	House (constructed with Bank's finance) Value : not advised - approx. Rs.7 lacs Income : NIL

*Not taken into a/c in in the absence of verifiability of such borrowings

D)INVESTMENTS

NSCs	:	Rs.0.35 lacs
LIC	:	Rs.0.85 lacs
		Rs.1.20 lacs

E)MONTHLY INCOME

i) Family pension	:	Rs.5797/- p.m.
ii) Income of employed family member(s)	:	Rs. NIL
iii)Monthly relief under MWS	:	Rs. 250/-
iv) Assumed Intt.on 30% of net corpus of terminal dues @6.25% p.a.(if invested)	:	Rs. 363/-
v) Assumed intt. on investments @6.5%	:	Rs. 625/-
		Rs.7035/- p.m.

Salary Last drawn by the deceased employee : Gross-Rs.17992/-, Net -Rs.13925/-

The family of Late Shri R.P.Kalla consists of his wife aged 47 years and 1 son & 2 daughters aged 24, 27, & 22 years respectively. The elder daughter is already married. Now there are only 3 dependents left in the family and a monthly income of Rs.7035/- is considered adequate for sustenance of a family of 3 members. Shri Kuldeep Kalla, son of the deceased, has applied for appointment on compassionate grounds in Clerical Cadre. He has passed B.Com, Part-II exam. The family owns its own house.

> Consideration of all aspects in entirety, it is felt that the condition of the family cannot be termed as penurious.
>
> In view of the foregoing, it is felt that as per Corporate guidelines, it is a NOT a FIT case for appointment on compassionate grounds. The request of Shri Kuldeep Kalla for compassionate appointment in Clerical Cadre may, therefore, be declined."

The note above provides all necessary and minute details with regard to financial status of the family of the petitioner. From perusal of the note it is apparent that the petitioner's family is having a liability to repay the loan to friends and relatives in a tune of Rs.1.27 lacs. No movable property is available with the family. In the name of immovable property it is only a house worth approximate Rs.7 lacs. Out of that house the petitioner and his family is not getting any income. The family is having total investment of 1.20 lacs against National Savings Certificates and Life Insurance. The total monthly income of entire family is of Rs.7035/- against family pension, monthly relief under MWS, corpus of terminal dues and assumed interest on investment @ 6.5% per annum. On basis of the income of Rs.7035/- per month the respondent bank considered the condition of the petitioner's family as not penurious.

A reliance is also placed by counsel for the respondent bank upon a judgment of Hon'ble Supreme Court in the case of Punjab National Bank and others v.

Ashwini Kumar Taneja, reported in (2004)7 SCC 265, wherein denial of appointment on compassionate grounds to a person receiving family pension was held justified. In the case aforesaid also the same scheme was under consideration.

In rejoinder, in general the petitioner has reiterated whatever already stated in the petition for writ with an additional emphasis that the family pension of the petitioner shall be substantially reduced after a period of five years i.e. in the year 2007.

Heard counsel for the parties.

The only reason for denying appointment on compassionate grounds to the petitioner is that the condition of the petitioner's family is not so penurious that warrant such appointment. In view of it the main question required to be adjudicated is whether in available economic sources the family of the petitioner be termed and treated as penurious that may warrant appointment of the petitioner on compassionate grounds?

As stated in preceding paras the respondent bank while declining appointment to the petitioner has taken into consideration the fact that a sum of Rs.7035/-, that includes family pension, is adequate

for sustenance of a family of three members. It is true that by getting income in a tune of Rs.7035/- family of the petitioner shall be able to continue with their breath but that is not only requirement of life. The life is required to be dignified, that means something more than mere survival. A dignified life includes the minimum requirement for an honoured member of society with adequate source to provide education, medical facility and have capability to discharge simple social liabilities. The term “penurious” is for poor conditions, it does not mean the bagging conditions. It is highly unjust that the respondents considered a sum of Rs.7035/- as adequate for sustenance of a family of three members. The object of the rules/administrative instructions to provide compassionate appointment is to provide a helping hand to the family of a deceased employee in harness and this help should be in such nature that the family may maintain itself with atleast minimum dignity. From perusal of the note prepared by the bank while considering economic status of the petitioner's family, it is apparent that the worth of the house of petitioner is Rs.7 lacs only. The sole income of the petitioner is Rs.7035/- per month and one daughter of the deceased bank employee is still to be married. In such circumstances I do not consider that the economic status of the family of the petitioner is not penurious.

In the case of Punjab National Bank & ors. v. Ashwini Kumar Taneja (supra) Hon'ble Supreme Court held the non grant of appointment on compassionate grounds to the wards of deceased bank employees justified on the count that they were extended the benefits of pension. However, in entire judgment the amount of pension is not referred. In the case aforesaid as a matter of fact certain wards of the deceased bank employees sought their comparison with a set of wards of employees who were not getting pension.

In the present case the circumstances are totally different. The respondents considered the case of the petitioner under various heads prescribed to determine financial condition of the family and in those consideration family pension is only one criteria. Beside that several other conditions are required to be seen. As I have already stated earlier, the family of the petitioner received a very meagre amount against gratuity and Provident Fund. The income under the head of Welfare and LIC is also too meagre. No member of the family is in employment and the size of the family though is of three members but a daughter of deceased bank employee is yet to be married. In such circumstances, merely on the count that the mother of the petitioner is receiving family pension, appointment cannot be denied to the petitioner. The penurious conditions of every family are required to be decided on facts of each case. The law laid down by Hon'ble

Supreme Court in the case of Punjab National Bank & ors. v. Ashwini Kumar Taneja (supra), therefore, cannot be applied in present set of circumstances.

It is also required to be remembered that the appointment on compassionate grounds is not only a matter of giving a little help to the family of the deceased employee but it is also an effort to maintain honour and dignity of the family of deceased employee including the widow. Our society calls for worship of womanhood and honour of women but at the same time deny common human privilege to them specially to the single woman, may she be unmarried, divorced or widow. Unfortunate death of a husband is still a biggest misfortune for the women. The position of a widow in society is highly pathetic being discriminated socially, economically and religiously, even though our constitution guarantees equality to all in every sphere. In such circumstances State as well as the society must bear much responsibility to ensure that a widow be not economically deprived after traditional bread earner is no longer alive and she be not ignored being less capable in asserting herself. Appointment to widow or to her child gives a sense of security to a widow and that too is an important consideration in giving appointments on compassionate grounds. The provisions for grant of appointment after death of basic bread earner are not meant only to provide “Roti” to the family of deceased employee but also to ensure

the sense of honour and security with widow and her family in the terms of economic-stability and empowerment.

It can be said that the term “deceased employee” is not dependent to gender but we must not forget that in our society still the man is puller of family chariot. It is only few number of persons who secure appointments on compassionate grounds being dependent to a woman employee. An employer, therefore, while considering the case for grant of appointment on compassionate grounds should take into consideration all these factors. The destiny has given some power in their hands. This power should not be washed by taking negative decisions or by remaining passive, specially while taking an action to execute social beneficial legislation. It is true that a person having power is required to activate it in favour of needy and not in favour of greedy but if 99% needy persons fails to get their rightly claim only due to anxiety of powerful to restrain one greedy, then it is better to allow one greedy to fulfil the requirements of 99% needy.

In the instant matter it appears that the bank was over cautious in exercising its powers and reached at an erroneous finding that the family conditions of the petitioner is not penurious. Looking to all the facts and circumstances of this case, I am is of the absolute opinion that the petitioner's family can very

well be termed as penurious and the petitioner is entitled for appointment on compassionate grounds. The denial of the same, therefore, is declared illegal.

Accordingly, this petition for writ is allowed. The respondents are directed to recruit the petitioner in its service on compassionate grounds. An order in this regard is required to be passed within a period of three months from today.

No order to costs.

(GOVIND MATHUR),J.

kkm/ps.